

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

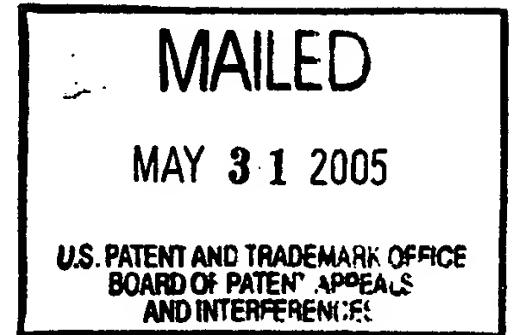
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL R. LEGER, DAVID BURDON,
ROBERT S. SON, KEVIN D. MARTIN,
JOHN HARRISON and KEITH R. HUGHES

Appeal No. 2005-0945
Application No. 09/698,278

ON BRIEF



Before OWENS, LEVY, and BLANKENSHIP, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-39, which are all of the pending claims.

THE INVENTION

The appellants claim an apparatus and method for providing weather information to an aircraft. Claims 1 and 14 are illustrative:

1. An apparatus for providing weather information onboard an aircraft, comprising:

a processor unit which processes weather information after it is received onboard the aircraft from a ground-based source containing a plurality of types of weather information; and

a graphical user interface which provides a graphical presentation of the weather information to a user onboard the aircraft, and which includes a user-selectable option that allows

the user to request specific weather information for transmission from the ground-based source to the aircraft.

14. A method of providing turbulence information to an aircraft, comprising the steps of:

collecting turbulence information at a centralized data center;

providing a specific request from the aircraft for the turbulence information;

transmitting the turbulence information from the data center to an aircraft in response to the request; and

graphically displaying the turbulence information onboard the aircraft.

THE REFERENCES

Ray et al. (Ray)	5,757,322	May 26, 1998
Simpson et al. (Simpson)	5,999,882	Dec. 7, 1999
Tu	6,014,606	Jan. 11, 2000
Bateman et al. (Bateman)	6,043,756	Mar. 28, 2000
Musland-Sipper (Musland-Sipper)	6,313,759	Nov. 6, 2001 (filed Mar. 16, 2000)

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows:

claims 1, 3, 5 and 8 over Musland-Sipper in view of Simpson;

claim 2 over Musland-Sipper in view of Simpson and Bateman;

claim 4 over Musland-Sipper in view of Simpson and Tu; claims 6 and 7 over Musland-Sipper in view of Ray; and claims 9-39 over Ray in view of Simpson and Bateman.¹

¹The rejections of claims 2 and 4 in the final rejection (page 4) are not included in the statement of the rejections in the examiner's answer (page 3). Because the record does not indicate that those claims have been canceled or that their

(continued...)

OPINION

We reverse the rejections of claims 1-8 and affirm the rejection of claims 9-39.

The appellants state that the claims stand or fall in three groups: 1) claims 1-5 and 8; 2) claims 6 and 7; and 3) claims 9-39 (brief, page 5). We therefore limit our discussion of the affirmed rejection of claims 9-39 to one claim in that group, i.e., claim 14. *See In re Ochiai*, 71 F.3d 1565, 1566 n.2, 37 USPQ2d 1127, 1129 n.2 (Fed. Cir. 1995); 37 CFR § 1.192(c)(7)(1997).

Claims 1-8

Claims 1-8 require that a user onboard an aircraft requests specific weather information for transmission from a ground-based source to the aircraft.

For this claim requirement the examiner relies upon Musland-Sipper (final rejection mailed December 23, 2003, paper no. 13, page 2). The examiner argues (answer, page 4):

In the graphical interface disclose [sic] in Musland-Sipper, column 4, lines 24-27, a "REQ WEATHER DEV" allow [sic] the operator to request for a weather

¹(...continued)
rejection has been withdrawn, we consider the omission of the rejection of those claims from the examiner's answer to be inadvertent.

deviation up to a specified distance and in a given direction. Appellant argues that the request in Musland-Sipper "is not a request for specific information a [sic, as] recited in Applicant's claimed invention, as it lacks any details regarding the requested weather deviation". While it is agreed that the reference provides little detail, the word "information" as claimed is a very broad term that basically encompasses all data to be read by a person. This definition of "information" would include the "deviation" of the Musland-Sipper. Also, the level of skill in the art is illustrated by the lack of details in Musland-Sipper. That is, it is clear that the level of skill in the art is quite high and therefore little is needed to suggest that information regarding weather is displayed in response to the "REQ WEATHER DEV" request.

During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, as the claim language would have been read by one of ordinary skill in the art in view of the specification and prior art. See *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

The appellants' specification indicates that by "weather information" the appellants mean information on the weather itself, "such as convection, turbulence, icing, cloud cover, precipitation, etc." (page 3, paragraph 0009). Musland-Sipper, in contrast, discloses that an operator can request a weather

deviation up to a specified distance and in a given direction (col. 4, lines 24-27). Interpreting the appellants' claim term "weather deviation" as including this request for permission to deviate due to the weather, which is not a request for information on the weather itself, is an unreasonably broad interpretation of that term in view of the appellants' specification. As for the examiner's argument that the level of skill in the art is so high that there is no need for Musland-Sipper to suggest that weather information is displayed in response to the weather deviation request, that argument is mere speculation, and such speculation is not a sufficient basis for a *prima facie* case of obviousness. See *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968); *In re Sporck*, 301 F.2d 686, 690, 133 USPQ 360, 364 (CCPA 1962).

We therefore conclude that the examiner has not carried the burden of establishing a *prima facie* case of obviousness of the invention claimed in the appellants' claims 1-8.²

² The examiner does not rely upon Simpson, Bateman, Tu or Ray for any disclosure that remedies the above-discussed deficiency in Musland-Sipper.

Claim 14

Ray discloses a device and method for providing weather information to an aircraft (col. 1, lines 8-11). A ground weather station detects atmospheric electrical activity generated by storms and other disturbances, compiles and stores the received signals, and transmits the information to a user in response to the user requesting weather information from the ground weather station (col. 2, lines 7-12; col. 3, lines 31-34; col. 5, lines 45-49). The weather information is graphically displayed onboard the aircraft (col. 2, lines 12-15; col. 4, lines 19-39; col. 5, lines 22-24). Regarding the types of weather information detected, Ray states that "[i]t is contemplated that each weather ground station will include instrumentation to measure local barometric pressure, temperature, humidity, and wind speed and direction, and will include these data in its telemetry to aircraft or to other users" (col. 5, lines 25-29). It is undisputed that, as argued by the examiner (final rejection mailed December 23, 2003, paper no. 13, page 6), Bateman's disclosure of providing turbulence information to an aircraft (col. 2, lines 21-30) would have fairly suggested, to one of ordinary skill in the art, including

turbulence information among the types of weather information transmitted to Ray's aircraft.

The appellants argue that "Ray is understood to disclose that SIGMETS [significant meteorological information] are transmitted automatically to the aircraft, or an [sic] aircraft equipped with cellular telephones are called by the ground station (see column 5, lines 55-63) and asked if they want to receive this information" (brief, page 9). Ray discloses, in the portion relied upon by the appellants, that SIGMETS can be transmitted to an aircraft either on request by the FAA or in response to a cellular telephone call from a ground station asking if the aircraft wishes to receive the latest SIGMET notice for its area. In another portion, however, Ray discloses that weather information is transmitted from a ground station to an aircraft in response to a request for weather information from the crew of the aircraft (col. 3, lines 30-33).

The appellants argue that "Ray can also provide atmosphere electrical activity information to an aircraft generated by storms or other disturbances 'responsive to a service request' (column 2, lines 7-12), but this is not understood to mean a request from the aircraft, and Ray does not elaborate on where

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the request initiated" (brief, page 9). Ray elaborates on where the request initiated at column 3, lines 30-33 where Ray discloses that the request is by the crew of an aircraft.

For the above reasons we are not persuaded of reversible error in the examiner's rejection of the appellants' claims 9-39.

DECISION

The rejections under 35 U.S.C. § 103 of claims 1, 3, 5 and 8 over Musland-Sipper in view of Simpson, claim 2 over Musland-Sipper in view of Simpson and Bateman, claim 4 over Musland-Sipper in view of Simpson and Tu, and claims 6 and 7 over Musland-Sipper in view of Ray, are reversed. The rejection of claims 9-39 over Ray in view of Simpson and Bateman is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

Affirmed-in-Part

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